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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Signature]

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EDUARDO DUARTE,

Petitioner,

vs.

TIMOTHY BUSBY, Warden,

Respondent.

CASE NO. 12-CV-969 BEN (PCL)

ORDER:

**(1) ADOPTING REPORT &
RECOMMENDATION AND
DENYING PETITION**

**(2) DENYING CERTIFICATE OF
APPEALABILITY**

[ECF No. 20]

I. The Petition

On April 18, 2012, Eduardo Duarte ("Petitioner"), a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. On May 15, 2013, Magistrate Judge Peter C. Lewis submitted a thoughtful and thorough Report and Recommendation. Magistrate Judge Lewis recommended denial of the petition. He set a deadline of June 12, 2013 for Petitioner to file objections. That deadline lapsed.

On July 11, 2013, Petitioner requested additional time to file objections. This Court extended the deadline to August 26, 2013 but cautioned that it would be reluctant to grant additional extensions. Again the deadline lapsed. No objections

1 have been filed.¹

2 Federal Rule of Civil Procedure 72(b) “makes it clear that the district judge
3 must review the magistrate judge’s findings and recommendations *de novo* if
4 objection is made, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d
5 1114, 1121 (9th Cir.2003) (en banc). No objections having been filed, the Court
6 **ADOPTS** the Report and Recommendation in full and **DENIES** the petition for writ
7 of habeas corpus.

8 **II. Certificate of Appealability**

9 Under Federal Rule of Appellate Procedure 22(b), there is no appeal from the
10 final order in a habeas proceeding unless a “circuit justice or a circuit or district
11 judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” A “certificate
12 of appealability may issue . . . only if the applicant has made a substantial showing
13 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When the district
14 court has rejected a claim on the merits, a “petitioner must demonstrate that
15 reasonable jurists would find the district court’s assessment of the constitutional
16 claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
17 Petitioner has failed to make the required showing. Accordingly, the Court
18 **DENIES** Buchanan a certificate of appealability.

19 **IT IS SO ORDERED.**

20 DATED: September 16, 2013

21 
22 HON. ROGER T. BENITEZ
23 United States District Court Judge
24
25

26 ¹ The docket reflects that on August 22, 2013, the Court received a “Notice of Change of
27 Address” from Petitioner, dated August 13, 2013. (ECF No. 25.) Accompanying this document was
28 a “Proof of Service by Mail,” in which Petitioner states that he “served” a document entitled
“Objection to Magistrate Judge’s Report and Recommendation” on the United States District Court
for the Southern District of California on August 13, 2013 by placing it in the United States mail. No
such document or any substantive objections have been received by the Court.